In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 83

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, APPELLANT,

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

Appellant, a land-grant railroad company, in 1910, 1911, and 1912 handled the following shipments.

Coal, from mines in Illinois to and for schools of Standing Rock Indian Agency located in North Dakota, South Dakota, and Minnesota (Tr. 6); and to and for the Quartermaster at Ft. Snelling, St. Paul. (Tr. 6, 7.)

Coal, sand, and cement delivered at Minnehaha, Minnesota, for engineering use on a lock and dam improvement obtained by contracts with Engineer Corps, United States Army, at St. Paul. (Tr. 7.)

Piling and lumber from the State of Washington for engineering improvement at Minnehaha obtained by Engineer Corps at St. Paul, or for harbor improve-

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ments near Racine, Wisconsin, obtained by the Engineer Corps at Milwaukee. (Tr. 7.)

Piling and lumber obtained from the State of Oregon by the Engineer Corps at Kansas City, Missouri, for Missouri River improvements near Sioux City, Iowa.[1] (Tr. 7.)

Piling and lumber obtained by Engineer Corps at Chicago for improvements in Calumet River. (Tr. 8.)

While it does not appear that the carrier was aware of the terms of the agreements between the Government and the consignors, those agreements provided that the prices named were to apply free on board the cars with the right of inspection either at point of origin or destination, as the case may be, with the right to accept or reject before payment. (Tr. 8.)

The carrier itself applied the land-grant rates and its bills so made out by it were paid without protest. (Tr. 8.) Without any charge of fraud, misrepresentation, deceit, or suppression or withholding of facts of any kind, appellant sued to recover $53,000 as the amount "improperly withheld from it by reason of the application of land-grant freight rates to shipments on Government bills of lading." (Tr. 10.)

In *Illinois Central Railroad* v. *United States*, 265 U. S. 209, this Court affirmed the judgment of the Court of Claims (57 Ct. Clms. 277) which dismissed the petition of the carrier. The similarity of the

[1] Agreements between the sellers and Government officers provided, "This arrangement is made to enable the Government to take advantage of land-grant rates * * *." (See Finding VIII; Tr. 8, 9.)

findings would indicate the Court of Claims in the instant case followed its findings in the *Illinois Central Case*, thus:

Illinois Central	Chicago, Milwaukee & St. Paul
Finding XI	*Finding XI*
The plaintiff's bills were presented to the Government for payment of the net freight for the transportation of said coal and other articles after the proper land-grant deductions had been made by the plaintiff in stating its bills and payment was made to the plaintiff of the full amount claimed on that basis and accepted without protest.	In every instance the plaintiff's bills were presented to the Government for payment of the net freight for the transportation of said coal, sand, cement, and other articles after the proper land-grant deductions had been made by the plaintiff in stating its bills, and payment was made to the plaintiff of the full amount claimed on that basis and accepted without protest.
Finding XIII	*Finding XII*
The Government form of bills of lading used in the transportation of articles in question provided on its face for the hauling of Government property only, and the directions on the back of the same limited their use to Government property. The	The Government form of bills of lading used in the transportation of the articles in question provided on its face for the hauling of Government property only, and the directions on the back of same limited their use to Government property.

agreement on the back of the same between the United States and the carrier stipulated that prepayment of charges should in no case be demanded by the carrier, nor should collection be made from the consignee; that on presentation to the office indicated on the face of the bill of lading properly accomplished, attached to freight voucher prepared on authorized Government form, payment would be made to the last carrier unless otherwise specifically stipulated; that the shipment was to be made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate would be available unless otherwise indicated on the face of the bill of lading.

The agreement on the back of the same between the United States and the carrier stipulated that the prepayment of charges should in no case be demanded by the carrier, nor should collection be made from the consignee; on presentation to the office indicated on the face of the bill of lading, properly accomplished, attached to freight voucher prepared on authorized Government form, payment would be made to the last carrier unless otherwise specifically stipulated; the shipment was to be made at the restricted or limited valuation specified in the tariff or classification, at or under, on which the lowest rate would be available unless otherwise indicated on the face of the bill of lading.

In dismissing the petition, the Court of Claims, in the instant case, said (57 Ct. Clms. 569, 576, Tr. 11):

> In view of what has been said it is hardly necessary to refer to the fact that the bills of

> the plaintiff were presented to the officers of the Government with land-grant deductions, were paid as presented, and payment of the same was accepted by the plaintiff without protest. It is not perceived how the plaintiff can now reopen this question of payment, even though the property transported was not the property of the Government, or how if it were not the property of the Government the latter could be made liable at all for its transportation without affirmative proof that some agent of the Government was authorized to create a liability for the transportation of property not belonging to the Government.

In *Illinois Central Railroad* v. *United States*, 265 U. S. 209, 214, this Court said:

> The Government dealt with the consignors as if the property was its—dealt with the Railroad Company as if the property was its, the Government's, and, as we have seen, the Railroad Company dealt with the Government on that assumption, and the contractors dealt with it on that assumption. The incidental regulations between it and the contractors cannot divest that ownership in the interest of the Railroad Company.

On the authority of the *Illinois Central Case, supra*, the judgment of the Court of Claims should be affirmed.

BLACKBURN ESTERLINE,
Assistant to the Solicitor General.

OCTOBER, 1924.

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